154 (Ky.). Yet in the latter case there is nothing to show that the guaranty was under seal. Though the ultimate judgment is correct, therefore, the court seems to have taken no notice of the fundamental difference between a simple contract and a covenant. Yet in carrying out to its fullest extent the doctrine advocated above, one is met by a twofold difficulty. To say that the guarantor's death does not revoke the guaranty under seal is to impose upon the guarantor's estate a heavy burden that may last for an indefinite length of time, though the estate of the guarantor may look to equity for relief. See *National Eagle Bank* v. *Hunt*, 16 R. I. 148. On the other hand, when the guaranty is not under seal, the holder is often induced to act in reliance upon it after the death of the guarantor and before he has had notice of that fact. As in the law of agency the death of the principal revokes the agent's authority without notice, so here there is at common law no escape from this difficulty.

Ex Post Facto Laws. — It is well settled that a retroactive law which increased the punishment of a crime is, as to offences committed before that time, an *ex post facto* law, and hence under our Federal Constitution a nullity. Whether, however, a mere change in the nature of the punishment inflicted is to be deemed within the constitutional limitation is a question on which the courts do not agree. According to some authorities any law is *ex post facto* which makes an act punishable "in a manner in which it was not punishable when committed," or "which increases the punishment with which an act was punishable when committed." *Shepherd* v. *The People*, 25 N. Y. 406. On the other hand it has been held that the substitution for one form of punishment of another that is undoubtedly less severe is not an *ex post facto* law. This doctrine would seem to be more in accordance with the apparent object of the constitutional provision, did it not leave the whole question as to the relative severity of punishments to judicial discretion. This discretion, moreover, seems to be of a highly variable nature as between the different States. In Indiana a maximum punishment of imprisonment for seven years was deemed to be less severe than the infliction of not more than one hundred stripes. *Strong* v. *State*, 1 Blackf. 193. Owing to the great degradation of the punishment stripes have been held to be worse than the death penalty. *Herber* v. *State*, 7 Tex. 69. Yet in South Carolina a change from death to fine, imprisonment, and whipping was allowed by the Court of Appeals. *State* v. *Williams*, 2 Rich. 418.

In the light of these conflicting views as to the relative severity of various punishments, and as to which the criminal would prefer to suffer, — for in reality that is the ultimate test, — it would seem that the better rule is that which excludes any change in the manner of punishment, — excepting only a change from death to life imprisonment. Many authorities support this exception, and recently it has received the sanction of the Supreme Court of Mississippi, where, "to obviate the scruples of those conscientiously opposed to the infliction of the death penalty," a statute gives the jury discretionary powers to fix the punishment for murder at life imprisonment or death. This change was held not to be *ex post facto*. *McGuire* v. *State*, 25 So. Rep. 495 (Miss.). This exception only may well be allowed to the rule of strict construction. To go farther, however, is to leave to the discretion of the court questions which the precedents seem to show are difficult of decision and often unsatisfactory in result.